IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1971

No. 71-[illegible]

THE TEXAS HIGHWAY DEPARTMENT, ET AL,
Petitioners

vs.

NAMED INDIVIDUALS,
Respondents

AMICI CURIAE BRIEF OF CITIZENS COMMITTEE FOR COMPLETION OF THE NORTH EXPRESSWAY AND NORTH LOOP 410 ASSOCIATION, INC.

HUBERT W. GREEN
900 Alamo National Building
San Antonio, Texas 7820

Attorney for Amici Curiae, Citizens Committee for Completion of the North Expressway and North Loop 410 Association, Inc.

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The Citizens Committee for Completion of the North Expressway and North Loop 410 Association, Inc., subject to their motion for leave to file a brief as Amici Curiae, file this their Amici Curiae Brief in support of the Petition for Writ of Certiorari heretofore filed herein by the Texas Highway Department, et al., Petitioners, and would show the Court the following:

INTEREST OF AMICI CURIAE

The Citizens Committee for Completion of the North Expressway is an association of private citizens in San Antonio organized in September, 1971, for the express purpose of supporting the prompt completion of the North Expressway. It has carried out an extensive campaign for citizen support of the North Expressway

through the media, civic groups and trade associations. In a Citywide petition campaign *103,337 persons signed a petition* supporting the prompt completion of the North Expressway [See Appendix "A," p. 9], and 25 civic and trade associations of the San Antonio community reaffirmed their support for the prompt completion of the North Expressway [See Appendix "B," p. 10.] Accordingly, this "Citizens Committee" has provided a voice and an outlet of support for those individual citizens, organizations and associations who are vitally affected by the delays in the completion of this Expressway.

The North Loop 410 Association, Inc., is a Texas non-profit corporation, organized for the purpose of advancing the business, professional and civic interest existing in the North Loop 410 area of San Antonio. This area is adjacent to the geographical route and terminal points of the proposed North Expressway. As such, it is one of the trade associations whose membership and interests are directly affected by the Expressway, and which have suffered greatly from the failure of the City-State-Federal partnership to complete the Expressway program of San Antonio.

ARGUMENT FOR GRANTING THE WRIT

A. *The unconscionable delay requires authoritative decision of the question presented:*

To the Citizens Committee, it is understandable that the State of Texas has taken the drastic step of abandoning the use of Federal funds. After ten years of litigation in many courts with different adversaries, a new appraisal was necessary. After all, the Highway Department owes its first allegiance to the people of the community it seeks to serve. It is for the State finally to decide whether federal funding will *benefit* this high-

way project or effectively *destroy* it for use by the present generation.

Consider this dilemma: After long efforts to adjust the interests of all parties, the Secretary of Transportation in August, 1970, approved construction of the two end segments, pending review of the middle or disputed segment. Thereafter contracts were let and construction commenced in November, 1970, only after all federal courts denied a stay order. The City of San Antonio, not a party to this litigation, had purchased all right-of-way, redesigned a portion of Brackenridge Park golf course, and purchased several hundred acres of new parkland, all to accommodate the expressway construction. Thereafter, the project was shut down by stay order in May, 1971. Affidavits filed at the time of the State's Motion for Rehearing estimate physical damage accruing to the work at $4,250,000. To quote the District Highway Engineer:

> "It is indeed a sorry and sickening sight to observe the devastating effects of rain on this highly complicated creation of men and machines and to realize that we can do nothing to remedy the damage and continue with the work of creating a public facility of beauty and utility which has challenged the minds and talent of many dedicated people." [Interoffice Memo, p. 16, State's Petition for Rehearing.]

The federal agencies now cannot proceed to their tasks when the state has withdrawn from the partnership. The district court can not proceed to trial without an administrative review, and it is not free to dismiss the suit. The result is a judicial impasse—while the citizens of San Antonio must live daily with the disruption and inconvenience of the decaying "concrete offspring." Without a doubt, the thousands of con-

cerned citizens in this city consider this kind of stalemate to be intolerable.

B. *There is no longer Federal jurisdiction when Federal funding has been abandoned:*

To the Citizens Committee the holding of the Court of Appeals has left all parties in a dilemma. The rules fashioned by that court are not only unsound, but they have raised new and thorny questions which the opinion does not resolve. For example if the State cannot withdraw from a Federal-aid project, is the State thereby *forced* to accept Federal funding? Did the Congress ever intend that the State, in order to complete a project begun with good faith and intentions, must invariably swallow the funds tendered by Congress? We certainly think not.

For what reasons should the Federal government retain jurisdiction over a highway project? The judicial history of the Federal-aid programs show that the courts have exercised judicial power when (1) there is a possibility of Federal funding, (2) where the Secretary has been requested to make his statutory findings for route approval, and injunctive relief is necessary to keep his options open, and (3) where housing displacement has resulted and federal relocation programs are invoked.[1] Yet no such reasons have been advanced in this case, and none existed after the State notified the Department of its "irrevocable" abandonment of Federal funds. In the examples above given the determination of *when* a project becomes "Federal" is crucial to the triggering of the sundry programs, environmental determinations, and administrative findings leading to the final project agreement. Early

[1]See *La Raza Unida v. Volpe*, 337 F.Supp. 221 (N.D.Calif, 1971).

application of these conditions to a project is easily justified where Federal funding is to follow. But this does not warrant the subsequent application of these conditions to a project that is no longer federal because it is no longer federally funded.

Perhaps orderly procedure would require the determination of some point when the State's obligation to comply with Federal conditions is finalized,[2] so that Federal agencies are not put to a useless task. If this be so, it should be a matter for Congress to state or the Federal administrator to set forth in proper regulations so that both state and Federal partners and citizens alike would understand. It should not be a matter of judicial fiat, where the punishment is assessed in the same breath that the rule is fashioned.

Furthermore, no one has yet contended that the subject statutes enact a truly *Federal* environmental program intended to have universal application. There are many roads and highways built by the Cities, Counties and States with their own funds and employing their own concept of proper environmental policy. Indeed, Texas cannot be accused of seeking to avoid a sound environmental policy, because it must still comply with a Texas statute which is substantially identical to the "parklands" conditions of the Highway and Transportation Acts.[3]

C. *The court used an erroneous standard to bind the State to a Federal project:*

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[2]As for example, at the execution of the "formal Project agreement" required by 23 U.S.C. §110 [which agreement was never executed by the State in this case].

[3]See Art. 5421q, Tex.Rev.Civ.Stat.Ann. (Supp. 1972) where the identical environmental findings must be made as are required by 23 U.S.C. §138, and 49 U.S.C. §1653(f).

Already criticized is that portion of the Court of Appeal's opinion which relies on the Secretary's August, 1970, approval as being both unlawful to bind the Federal government and yet sufficient to bind the State to a Federal-aid project. As incongruous as that reasoning may be it is even more suspect when the weakness of the facts surrounding such "approval" are considered. The record shows that some sort of compromise was reached whereby approval was given *only* of the two end segments, upon the condition that the middle (or controversial) segment would be further studied. Regardless of the Secretary's authority to segment the project, it still remains that no approval whatever was given to the *whole* project, and no approval whatever was given to the only segment of the project that was controversial *from the standpoint of parklands.* Thus, even under that court's theory or under any other theory, it cannot be said that the Secretary has given statutory Federal-aid approval, whether legal or illegal, *to the portion of the Expressway in dispute.*

D. *The damage to future Federal-State relations:*

To the citizens groups, a distinct and radical change in federal policy is evidenced by the Circuit Court's opinion. The previous case law development under the environmental statutes applied federal power for the purpose of protecting and enforcing Congressional policy in the instances where Federal funds were involved. That federal power has now been extended to shut down construction of a highway project where Federal funds have been *unequivocally rejected.* We see no sound reason to justify this extension of judicial power, and suggest that it can only impair the working relations between federal and local governments, not only in the highway program, but in a multitude of Federal-aid programs which depend upon a delicate balancing of

the authority between all levels of government. Indeed, the nature of our federal system depends upon this delicate balance, and it can succeed only when the federal authority sparingly exercises this judicial power over matters of state and local concern and only when clearly required by valid Congressional acts and policy. Local citizens view this litigation as an unseemly contest between the will of the federal and state governments, and until this nation's highest court settles the question of which government is entitled to exercise the power to build and complete this project, the citizens are the clear losers and suffer the brunt of the battle.

CONCLUSION

This court has always been responsive to the needs and aspirations of the individual citizen, pitted against the power and might of his government. But in this instance, the individual citizen—the one intended to be the beneficiary of all this Federal largess—finds himself caught up in the push-pull tug of war *between* the Federal and State authorities over the completion of this project. Everyone agrees the project is sorely needed, that both practical as well as ecological interests must be weighed and balanced in the process. But for almost ten years litigation has raged over these interests, and now the question is reduced to *which government* will rule over this project. There could be, therefore, no more classic reason for the granting of this Writ of Certiorari, for this court to adjust these Federal-State relationships, and restore reason and justice to the interpretation of the Federal-aid statutes.

WHEREFORE, these Amici Curiae respectfully recommend that Writ of Certiorari be granted and judgment of the Court of Appeals be reversed.

Respectfully submitted,

HUBERT W. GREEN
900 Alamo National Building
San Antonio, Texas 78205

Attorney for Amici Curiae,
Citizens Committee for Completion
of the North Expressway and
North Loop 410 Association, Inc.

FINDLING, MILAM & PYLE
Certified Public Accountants
E-115 Petroleum Center
San Antonio, Texas 78209
824-3224

Willard H. Findling, CPA
Robert B. Milam, CPA
Jerry A. Pyle, CPA

Members American Institute of Certified Public Accountants

April 18, 1972

CITIZENS COMMITTEE FOR COMPLETION OF THE NORTH EXPRESSWAY
900 N. E. LOOP 410
SAN ANTONIO, TEXAS

GENTLEMEN:

WE HEREBY CERTIFY THAT WE HAVE COUNTED

103,337

SIGNATURES ON YOUR PETITION:

"WE, THE UNDERSIGNED RESIDENTS OF SAN ANTONIO AND BEXAR COUNTY, STRONGLY URGE THE IMMEDIATE RESUMPTION OF CONSTRUCTION AND PROMPT COMPLETION OF THE NORTH EXPRESSWAY PROJECT. THE PEOPLE HAVE BEEN TOO LONG DENIED THE USE OF THIS EXPRESSWAY AND FEEL THAT THE DELAY HAS BEEN DETRIMENTAL TO THE GENERAL WELFARE OF ALL."

THIS PETITION WAS CIRCULATED BETWEEN SEPTEMBER 29, 1971, AND DECEMBER 15, 1971, AND OUR FIRM WAS SELECTED BY YOUR COMMITTEE TO COUNT THE SIGNATURES.

Yours very truly,

FINDLING, MILAM & PYLE

By Willard H. Findling
Willard H. Findling, Partner

APPENDIX "A"

San Antonio Civic, Trade and Professional Organizations Which Have Endorsed Prompt Completion of North Expressway

Alamo Area Lumbermen's Association
Alamo Handicapped Association
Alamo Heights Lions Club
Alamo Heights Northeast Chamber of Commerce
Alamo Heights Rotary Club
Alamo Kiwanis Club of San Antonio
Citizens Association for Progress
Exchange Club of Highland Park
Exchange Club of San Antonio
Highland Hills Lions Club
Highland Park Lions Club
North Central Lions Club of San Antonio
North Loop 410 Association, Inc.
Northwest Kiwanis Club of San Antonio
Northwest Lions Club
Rotary Club at Highland, San Antonio
San Antonio Association of Life Underwriters
San Antonio Board of Realtors, Inc.
San Antonio Branch, American Society of Civil Engineers
San Antonio Building and Construction Trades Council, AFL-CIO
San Antonio Chamber of Commerce
San Antonio Chapter No. 65, Society of Real Estate Appraisers
San Antonio Home Builders Association
Sunrise Optimist Club of San Antonio
Taxpayers League of San Antonio
Tower Optimist Club

APPENDIX "B"